

Exhibit B

(Part 2 of 2)

1 operating officer, is to be responsible for the
2 operations of the company.

3 Q. Did you have involvement in the hiring of
4 Mr. Arteaga for that role?

5 A. I don't recall that I did.

6 Q. Who then hired Mr. Arteaga?

7 MR. LEON: Object to form.

8 A. I don't know who interviewed him for
9 the job.

10 Q. Do you recall that Mr. Arteaga was on the
11 management board at Schur?

12 A. Yes, I do.

13 Q. Okay. And you approved Mr. Arteaga being
14 part of the management board at Schur?

15 A. I did.

16 Q. Was Mr. Humer part of the management board
17 at Schur as well?

18 A. I recall that he was.

19 Q. And you approve Mr. Humer being part of
20 the management board at Schur, correct?

21 A. Correct.

22 Q. Now, it also mentions, in the lower
23 left-hand corner, Mr. Fischkin, who we've been
24 speaking about, and it identifies him as group
25 finance director.

115

133

1 What is "group finance director" at Schur?

2 A. I don't know.

3 Q. So did you know, at the time you served on
4 the advisory board, what the group finance director
5 did at Schur?

6 MR. LEON: Object to form.

7 A. I may have, but I don't recall today.

8 Q. And apart from the title, does looking at
9 this document refresh your memory at all as to what
10 Mr. Fischkin's roles and responsibilities were at
11 Schur?

12 A. It does not.

13 Q. But you have no doubt that he -- as of the
14 time of this presentation, he was the group finance
15 director at Schur, fair?

16 A. Based on reviewing this email and the
17 attachment, I have no reason to doubt that.

18 Q. And this document does not identify a
19 chief financial officer, fair?

20 A. This page does not. I haven't reviewed
21 the whole document, but this page does not.

22 Q. Well, wouldn't you expect that the page --
23 pardon me -- that the management team it would refer
24 to -- it would identify a CFO -- the CFO if there
25 was one?

1 A. I would expect.

2 Q. Does that refresh your memory at all as to
3 whether there was a CFO following Mr. Schernthaner's
4 elevation to CEO?

5 A. As I said, I don't see it on the page.

6 I don't -- I don't see a CFO on the page.

7 Q. And you don't know why, one way or the
8 other, that was the case. Correct?

9 A. I don't recall.

10 Q. Did -- did you ever meet Mr. Fischkin?

11 A. I may have met him virtually. I don't
12 recall if I met him in person.

13 Q. Did you form any views as to his
14 capabilities?

15 A. I did not.

16 Q. And again, you -- but you didn't know what
17 exactly his job responsibilities were. Do I have
18 that right?

19 A. You have that right.

20 Q. Who did you believe was in charge of the
21 day-to-day financial responsibility at Schur after
22 Mr. Schernthaner was elevated?

23 A. The management board had a responsibility
24 for Schur, its financials, and everything else. I
25 don't know who below that was responsible.

117

1 Q. Let's go back to Dees 5, if you could
2 locate that.

3 So this is a document we looked at
4 earlier. I want to now draw your attention to --
5 back to page 2, under the resolutions, the -- the --
6 the second resolution.

7 A. Okay.

8 Q. It states, The advisory board approves the
9 schedule of responsibilities of the management board
10 as resolved by the management board and attached
11 Schedule 1. You see that?

12 We -- we put a pin in Schedule 1 before,
13 and if you can turn to -- starting on page 5 of the
14 document, and then carrying over into page 6. Let
15 me know when you're there.

16 So, as of May 2019, you approved
17 Mr. Schernthaner being the chief executive officer,
18 or CEO, and the chairperson of the management board.

19 Do I have that right?

20 A. Yes, you do.

21 Q. And your understanding of his
22 responsibilities were in the bullets below that.
23 Correct?

24 A. As I -- as I read this, yes.

25 Q. And that would include finance?

1 Lindsay Goldberg?

2 A. No.

3 Q. Do you have an understanding of what
4 "IFRS" is?

5 A. I'd have -- I'm trying to remember.
6 International Financial Reporting Board or Body.

7 Q. And did you understand that those were the
8 rules governing Schur's accounts?

9 A. Yes.

10 Q. And just so I have it, were -- was the
11 accounting policy, including the use of
12 capitalization rules prescribed by IFRS, dictated by
13 Lindsay Goldberg Europe at Schur?

14 MR. LEON: Object to form.

15 A. No.

16 MR. ROSENBAUM: Let's mark this as 17 and
17 18. Or 17 and 17A. Let's do 17 and 17A.

18 (Document in German was marked Dees
19 Exhibit 17 for identification, as of this
20 date.)

21 (Translation of document in German was
22 marked Dees Exhibit 17A for identification, as
23 of this date.)

24 Q. I'm showing you what has been marked as
25 Dees 17, and -- along with Dees 17A. And I'll

120

1 represent for the record that 17A is a certified
2 translation of Dees 17.

3 So, starting on the first page of 17A --
4 well, let me ask a preliminary question. Do you
5 speak German, Mr. -- Mr. Dees?

6 A. I do not.

7 Q. Starting on the first page of 17A, it
8 says, Statement on the comments by Thomas Unger and
9 on the role of management of Lindsay Goldberg.

10 Do you see that?

11 A. I do.

12 Q. Have you seen this document before today?

13 A. I have not.

14 Q. Okay. If you turn to page 2, it
15 identifies Dr. Michael Fischkin.

16 Do you see that?

17 A. Okay. So -- not the one page, which page,
18 the one in the bottom or the --

19 Q. Page 2 of the document.

20 A. Okay.

21 Q. So it's --

22 A. The page after the cover.

23 Q. Correct.

24 Under -- it says, Defense attorney,
25 Dr. Michael Fischkin, represented by PLCB, and it

139

121

1 continues.

2 Do you see that?

3 A. I see that.

4 Q. I'll represent to you that this is a
5 statement that was submitted to the Austrian
6 prosecutor by Mr. Fischkin. And I want you to turn
7 to -- now, bottom right-hand corner, page 3, of the
8 document. The first sentence on the top of the
9 page, I just want to make sure we are on the same
10 place, it says, What is more, the accounting
11 policy -- namely the use of capitalization rules
12 prescribed by IFRS was dictated by Lindsay Goldberg.

13 Is that a true statement?

14 A. It is not.

15 Q. So you believe Mr. Fischkin was lying to
16 the prosecutor if he made that statement?

17 A. I said it's not a true statement. I do
18 not believe it's a true statement.

19 Q. So then you believe that Mr. Fischkin was
20 not telling the truth if that's what he said. Fair?

21 A. I'm simply saying, this is not a true
22 statement.

23 Q. Let's go to page 4. Top of the page, the
24 first bullet, it says, Lindsay Goldberg's management
25 was actively involved in the -- in operational

1 financial matters at Schur and in EBITDA
2 calculations for Schur.

3 Is that a true statement?

4 A. It is not.

5 MR. LEON: Object to form.

6 A. It is not a true statement.

7 Q. If --

8 MS. YEU: Could we just quickly clarify,
9 at least based on page 2, "Lindsay Goldberg"
10 is -- is a shorthand for Lindsay Goldberg
11 Europe?

12 MR. ROSENBAUM: Yeah, I was going to --

13 MS. YEU: Oh, okay. Sorry.

14 MR. ROSENBAUM: -- I was going to ask the
15 same question and -- in two ways because
16 it's --

17 MS. YEU: Sorry about that. I just --

18 Q. So if I were to read it, Lindsay Goldberg
19 Europe's management was actively involved in
20 operational financial matters at Schur and in EBITDA
21 calculations for Schur, would you understand that
22 statement to be true?

23 MR. LEON: Objection to form. Foundation.

24 A. I would not say that that's a true
25 statement.

1 Q. So, again, if Mr. Fischkin made the
2 statement to the prosecutor, your -- your testimony
3 is he was lying; is that right?

4 A. My testimony is that this is not a true
5 statement.

6 Q. And if someone made that statement, then
7 to your -- in your view, they're not telling the
8 truth, correct?

9 A. I'm simply stating this is not a true
10 statement.

11 Q. Go to page 7. Go to the -- the second
12 full paragraph, the sentence starting with, The
13 accused will show this with some documents he has
14 received in the context of this statement.

15 I want you to start there.

16 A. Start where? Which page?

17 Q. Page 7. Bottom right-hand corner, page 7.

18 A. Okay.

19 Q. Middle paragraph.

20 A. Oh, there -- The accused will show?

21 Q. Yeah.

22 A. Okay.

23 Q. The accused will show this with some
24 documents he has received in the context with the --
25 of this statement.

1 And he continues, Thomas Unger and the
2 other members of the advisory board were closely
3 involved in the financial affairs of Schur, and as
4 can be proven were fully informed at all times about
5 the key financial figures and the amount of IFRS
6 capitalizations in detail.

7 Is that a true statement?

8 MR. LEON: Object to form.

9 A. This complete statement is not true.

10 Q. So if Mr. Fischkin told the prosecutor
11 this, you would say he was lying?

12 A. I'm saying this statement is not true.

13 Q. It continues, The decision on which
14 activation should be exercised came from
15 Lindsay Goldberg herself.

16 Is that a true statement?

17 MR. LEON: Objection to form.

18 A. That is not a true statement.

19 Q. And if I were to place -- replace, just so
20 we're clear on definitions, the decision on which
21 activation should be exercised came from
22 Lindsay Goldberg Europe, is that a true statement?

23 MR. LEON: Object to form. Foundation.

24 A. To my knowledge, that would not be a true
25 statement.

143

125

1 Q. And you base that knowledge on your role
2 as an advisory board member with Mr. Unger and
3 Mr. Ludwig, correct?

4 MR. LEON: I object to form.

5 A. I base it on my knowledge.

6 Q. Let's go to page 10. First paragraph, the
7 sentence starting with, For this reason, as numerous
8 documents show.

9 Let me know when you're there.

10 A. I'm there.

11 Q. It says, For this reason, as numerous
12 documents show, the focus was also placed on the
13 presentation and disclosure of the, quote, cash
14 EBITDA, end quote, EBITDA less noncash accounting
15 items such as IFRS capitalizations, when preparing
16 the company's key figures for the 2021 exit process.

17 First of all, have you heard the term
18 "cash EBITDA" in the context of your role at Schur?

19 A. It was not a commonly used term.

20 Q. Is -- that wasn't my question. Was the
21 term "cash EBITDA" used, that you recall, in
22 presentations that you received from Schur?

23 A. I can't recall if it was in presentations
24 on Schur.

25 Q. Do you have an understanding of what the

126

1 term "cash EBITDA" meant at Schur?

2 A. I don't.

3 Q. Did you ever?

4 MR. LEON: Object to form.

5 A. I don't because, as I said, I don't know
6 if there were presentations that I saw that had cash
7 EBITDA.

8 Q. It continues, Michael Dees, Thomas Ludwig,
9 Thomas Unger, and Paul Pruss, Philipp Schall, and
10 Goldman Sachs, as investment bank and M&A advisor to
11 Lindsay Goldberg were provided with detailed
12 reconciliations of cash EBITDA.

13 Is that a true statement?

14 A. I don't recall if it is.

15 MR. LEON: Is "Lindsay Goldberg" there
16 Lindsay Goldberg Europe?

17 MR. ROSENBAUM: Where?

18 MR. LEON: In the sentence you just read.

19 MS. YEU: Second page it says

20 Lindsay Goldberg is --

21 MR. LEON: I believe all references to
22 "Lindsay Goldberg" are Lindsay Goldberg Europe
23 so --

24 MR. ROSENBAUM: It's unclear to me whether
25 he is defining "Lindsay Goldberg" as including

145

1 Atlas Coöperatief, it really is. So I'm going
2 to -- if you want me to ask it both ways -- I
3 want a clear record on this. I'm not trying
4 to -- as you can see, I'm trying to ask it both
5 ways, because it's --

6 MR. LEON: Right.

7 MR. ROSENBAUM: -- it's not his testimony.
8 But he can testify from his knowledge whether
9 it's accurate, and I will ask it both ways.

10 MR. LEON: I understand. My objection is,
11 as to the extent you're asking about Lindsay
12 Goldberg Europe, there's a foundation problem,
13 obviously, not as to Lindsay Goldberg. That's
14 the point I'm making.

15 MR. ROSENBAUM: We'll deal with the
16 foundation problem separately. I don't view it
17 as a problem. I don't think there's a
18 foundation issue. He was on the advisory board
19 with two members of Lindsay Goldberg Europe.

20 Q. So let me go back to that sentence and ask
21 it two different ways.

22 Mr. Fischkin says, Michael Dees, Thomas
23 Ludwig, Thomas Unger, Paul Pruss, Philipp Schall,
24 and Goldman Sachs, as investment bank and M&A
25 advisor to Lindsay Goldberg, and he continues.

1 First of all, was it your understanding
2 that -- that Goldman Sachs was the investment bank
3 and M&A advisor to Lindsay Goldberg?

4 A. That's not my recollection.

5 Q. Who was Goldman Sachs investment bank and
6 M&A advisor to?

7 A. I believe they were M&A advisor to one of
8 the Schur entities.

9 Q. So reading it as a whole, Michael Dees,
10 Thomas Unger -- I'm sorry.

11 Michael Dees, Thomas Ludwig, Thomas Unger,
12 Paul Pruss, Philipp Schall, and Goldman Sachs were
13 provided with detailed reconciliations of cash
14 EBITDA.

15 Is that true?

16 A. I can't recall.

17 Q. Let's go to page 12. The top bullet says,
18 The requirement to interpret IFRS standards in the
19 sense of private equity structure and thus to make
20 comprehensive use of the capitalization options
21 provided by IFRS came from Thomas Unger.

22 Do you believe that to be a true
23 statement?

24 MR. LEON: Objection to form.

25 A. I -- I don't even understand what he means

147

129

1 by the beginning of that statement.

2 Q. What part don't you understand?

3 A. In the sense of the private equity
4 structure.

5 Q. Let's read that out. The requirement to
6 interpret IFRS standards and thus to make
7 comprehensive use of capitalization options provided
8 by IFRS came from Thomas Unger.

9 Do you believe that to be a true statement
10 in the context of Schur?

11 MR. LEON: Object to form.

12 A. To my knowledge, I do not believe it to be
13 a true statement.

14 Q. So it's your testimony that Mr. Unger was
15 not involved in that process?

16 MR. LEON: Object to form.

17 Q. Do I have that right?

18 MR. LEON: Foundation.

19 A. My knowledge is that he was not involved
20 in that process.

21 Q. And that would -- you -- would you expect
22 the executive chairman to be involved in that
23 process?

24 MR. LEON: Object to form. Speculation.

25 A. I would not expect members of the advisory

130

1 board to be involved in that process.

2 Q. Would you expect an operating CEO to be
3 involved in that process?

4 A. I would expect the management board to
5 prepare the financial statements.

6 Q. It continues in that sentence,
7 Lindsay Goldberg dictated which EBITDA adjustments
8 were to be made.

9 Let me ask that in two ways.

10 If it were to say Lindsay Goldberg Europe
11 dictated which EBITDA adjustments were to be made,
12 would you understand that to be true statement?

13 MR. LEON: Object to form. Foundation.

14 A. To my knowledge, it would not be a true
15 statement.

16 Q. And you base your knowledge on your role
17 on the advisory board at Lindsay Goldberg -- at
18 Schur, correct?

19 MR. LEON: Object to form.

20 A. It's based upon my knowledge.

21 Q. And that knowledge includes the knowledge
22 you gained on the advisory board of Schur, correct?

23 MR. LEON: Object to form.

24 A. Yes, that's correct.

25 Q. And if it were to say Lindsay Goldberg the

1 way we previously defined it dictated which EBITDA
2 adjustments were to be made, would that be true?

3 A. That would not be true.

4 Q. And you base that on your -- your position
5 as a partner in Lindsay Goldberg. Do I have that
6 right?

7 MR. LEON: Object to form.

8 A. Yes.

9 Q. Let's go to page 8.

10 A. Page? Which one?

11 Q. I'm sorry, page 21.

12 (Witness reviewing document.)

13 Q. The last paragraph on the page says, For
14 the formal budget documents for 2021, a
15 reconciliation between, quote, reported EBITDA,
16 adjusted EBITDA, and cash EBITDA, was prepared,
17 including a detailed explanation of capitalization
18 shown in order to provide Lindsay Goldberg with
19 transparent information about the composition of
20 EBITDA.

21 Do you recall that having happened?

22 A. I don't -- I don't have a recollection.

23 Q. Okay. Mr. Fischkin continues, This is
24 shown, among other things, by the following extract
25 from budget document presentation as of December 31,

132

1 2020, according to which the difference between
2 adjusted EBITDA, cash-based EBITDA -- I'm sorry,
3 adjusted EBITDA and cash-based EBITDA is
4 approximately 30 million.

5 And then there's an excerpt.

6 Do you dispute that you received the
7 budget for 2021 containing that excerpt?

8 A. I do not dispute that I received a budget.
9 I don't know if I received this presentation or this
10 page.

11 Q. But you -- and we can get further into
12 that, but you see that this page excerpted by
13 Mr. Schernthaner does identify cash-based EBITDA as
14 distinct from adjusted EBITDA and reported EBITDA.
15 Correct?

16 A. Yes, I do.

17 Q. And then it has different explanations,
18 with asterisks.

19 Do you see that? There's three next to
20 cash-based EBITDA?

21 A. I see what's written there.

22 Q. Okay. Did you receive that type of
23 information from Schur?

24 MR. LEON: Object to form.

25 A. I -- I don't know if I received this exact

1 page.

2 Q. Would it surprise you if you did?

3 A. It would not surprise me if I received
4 this page.

5 Q. And I take it, you know, in your role on
6 the advisory board, you were aware of the expenses
7 that Schur was capitalizing, correct?

8 MR. LEON: Object to form.

9 A. As a member -- as a member of the advisory
10 board, I received financial statements from the
11 management team and from the auditors.

12 Q. And so in that capacity, you were aware of
13 expenses, or expenditures, that Schur was
14 capitalizing, correct?

15 A. It would depend upon the information I was
16 provided by either the auditors or the management
17 team.

18 Q. That wasn't my question.

19 Were you informed of expenditures that
20 Schur was capitalizing, in your capacity as an
21 advisory board member? Yes or no.

22 A. I was --

23 MR. LEON: Objection. Asked and answered.

24 You answer it as --

25 MR. ROSENBAUM: No, it was not answered.

138

1 A. Yes, it is.

2 Q. Okay.

3 And within that budget, this capex, by
4 site, is identified. Right?

5 Starting on page 143.

6 A. Yes, it is.

7 Q. And capex are expenses that are -- they're
8 expenditures that are being capitalized, correct?

9 A. That's an informal way of saying it.

10 Q. But you agree with it.

11 A. That's an informal management reporting
12 way of saying it.

13 Q. Of saying -- saying what?

14 A. Capex, what capital expenditures are. I
15 mean, they're using capex and capital expenditures
16 interchangeably.

17 Q. I see. But -- but -- we're probably
18 missing each other, and it's probably my fault
19 because this is your area, not mine.

20 But when you hear "capex," that's
21 referring to expenditures that are being capitalized
22 by a company. Right?

23 A. Yes.

24 Q. Okay. And then, this budget that you
25 received summarizes, by site on the page we're

157

139

1 looking at, the budgeted capex figures for each
2 site. Fair?

3 A. That's -- that's fair.

4 Q. And then, when you continue into it, it
5 gives detail for each capital expenditure on a
6 project-by-project basis that identifies amounts,
7 whether it's major or minor, and other information.
8 Is that right?

9 A. Yes, that's right.

10 Q. And if you remember, we -- I can show it
11 to you again, but after receiving this budget, you
12 decided you want to look -- you wanted to look at
13 capex by facility. And you did that. Correct?

14 A. I asked someone to do that.

15 Q. So you were aware of the capitalization at
16 Schur based on this document. Correct?

17 A. I had this document. That is correct.

18 Q. And this document reflects the projects
19 that are going to be capitalized in the following
20 year. Correct?

21 A. As the title of the document indicates, I
22 think that's what it represents.

23 Q. So if you said to Mr. Fry you were unaware
24 of expenses that were capitalized at Schur, that's
25 not correct. Am I right?

140

1 Strike that.

2 So going back to these five, the advisory
3 board's and management board rules of procedure, and
4 specifically page 12, or 5 of 9, let me know when
5 you're there.

6 Under 3C -- we reviewed this earlier -- it
7 says, No later than ten days before the end of each
8 financial year, a draft annual budget for the
9 following financial year for consent for the meeting
10 of the shareholders.

11 And that's how it defines budget. Right?

12 A. That's how it defines budget.

13 Q. And it continues, The budget for the
14 following financial year must include monthly plans
15 for profit and loss, cash flows, income, and
16 expenditure. Right?

17 A. I think it says --

18 Q. Among other things.

19 A. -- income, expenditure, and cash.

20 Q. Okay. And the -- those capex tables that
21 we just looked at for the 2017 budget identified
22 expenditures for the following year.

23 Fair?

24 A. It did. For that year.

25 Q. So that is the type of budget document

158

141

1 that you would find consistent with the requirements
2 of the rules of procedure for the management board,
3 correct?

4 MR. LEON: Object to form.

5 A. That was the budget that was provided in
6 2017.

7 Q. And you joined the -- the advisory board
8 in 2017, correct?

9 A. Correct.

10 Q. And now going to page 6 of 9, Section 9,
11 "Acts Requiring Consent of the Advisory Board," 1A,
12 Determination of the budget as well as determination
13 and/or changes of the accounting and valuation
14 policies.

15 So you approved the budget, correct?

16 A. The budget --

17 MR. LEON: Object --

18 A. Not every page of a budget; a budget for
19 the company.

20 Q. So you -- the budget we just reviewed,
21 that is marked as Dees 10, it was your
22 responsibility on the advisory board to review and
23 approve it. Fair?

24 A. My responsibility was to approve the
25 budget, not to approve a presentation.

1 assumption of liability in connection with an
2 investment project of at least 1 million, that was
3 required to be approved by the advisory board,
4 including you, correct?

5 A. I could simply read what's on this
6 document.

7 Q. Yeah, that's what it says, right?

8 A. I'm reading 1M the same as you are.

9 Q. Okay. And if you go back to Dees 10,
10 starting on page 144, the bottom right-hand corner,
11 this document identifies site-by-site investment
12 projects, correct?

13 A. It appears to.

14 Q. So your understanding would be that those
15 were approved by the advisory board, correct?

16 A. I don't recall if they were approved or
17 not.

18 Q. Well, you don't dispute that you received
19 these ten, right?

20 A. I'm not disputing that I received it.

21 Q. And you would, likewise, agree with me
22 that if an investment project of over 250,000 that
23 was not budgeted was going to be undertaken by the
24 management committee, the management committee
25 had -- or management board had to come back to the

144

1 advisory board and get separate approval, correct?

2 A. That's -- that's what it says in this
3 document. I don't know if there are any other
4 procedures that were undertaken that would be
5 different than this.

6 Q. Are you aware of any other procedures
7 besides this that were in effect after May of 2019?

8 A. I -- I'm not. I'm not aware of the
9 documents.

10 Q. Are you familiar with a company called
11 Stern Stewart?

12 A. Yes, I am.

13 Q. What is Stern Stewart?

14 A. They're a consulting firm.

15 Q. Did Schur engage Stern Stewart?

16 A. We did.

17 Q. Did you approve it?

18 A. I don't recall if the advisory board did
19 or not.

20 Q. Do you know how much Schur paid to Stern
21 Stewart in any given year?

22 A. I do not.

23 Q. Did you ever know?

24 A. I --

25 MR. LEON: Object to form.

168

151

1 A. Yes, I do.

2 Q. And is this the same table that
3 Mr. Fischkin referred to?

4 MR. LEON: Object to form.

5 A. I'd have to --

6 Q. You can pull it --

7 A. -- back to the --

8 Q. It's 17A. I know -- I know it's
9 cumbersome, but this is what we do.

10 And it's on page 22 of 17A.

11 (Witness reviewing document.)

12 A. These look to be very similar, if not the
13 same page.

14 Q. Okay.

15 You can put that to the side.

16 We talked about Project Sky earlier, so I
17 want to just reorient you to that subject matter.

18 What -- what was Project Sky, in your
19 words?

20 A. Was a process to try to sell the company
21 in either 2019 or 2020.

22 Q. And as I recall, there was a refinancing
23 transaction in 2018? Does that -- is that right?

24 A. Yes, that's right.

25 Q. And that was also called dividend recap?

1 Is that a term you're familiar with?

2 A. That was part of the financing
3 transaction.

4 Q. Okay. Yeah, just can you explain to me
5 what "dividend recap" was as part of the financing
6 transaction in 2018?

7 A. In 2018, Schur raised debt. It had
8 two purposes, one was to refinance the existing
9 debt, and the other was to pay a dividend to the
10 shareholders of Schur.

11 Q. And how much existing debt did -- did
12 Schur have prior to the dividend recap financing?

13 A. I don't recall.

14 Q. How much was raised in the -- the
15 refinancing in 2018, in total?

16 A. I don't recall.

17 Q. Do you recall roughly around 300 million
18 euros?

19 A. I recall it's hundreds of millions of
20 euros --

21 Q. Okay. But you don't --

22 A. -- I don't know how many.

23 Q. Were you involved in the process of the
24 dividend recap?

25 A. As a member of the advisory board, we

171

153

1 certainly approved the dividend recap.

2 Q. And who -- was there an advisor to Schur
3 in that process?

4 A. I don't recall if there was.

5 Q. Do you recall Goldman Sachs being involved
6 or -- at all?

7 A. I don't recall.

8 Q. But Goldman Sachs was involved in
9 Project Sky?

10 A. Yes, they were.

11 Q. Who engaged -- what entity engaged
12 Goldman?

13 A. I don't recall which entity.

14 Q. But you recall it was a Schur entity?

15 A. I think it was, but I don't recall.

16 Q. Was -- was it Lindsay Goldberg?

17 A. I don't know if it was. I don't -- again,
18 I don't recall who engaged Goldman Sachs.

19 Q. Did -- did you -- in -- in the context of
20 the -- what we're calling the dividend recap
21 financing transaction, did you hear any reactions
22 from the market about the placement of that debt?

23 A. I read news articles about it.

24 Q. Do you recall what you read in those news
25 articles?

1 A. I don't remember any of the details.

2 Q. Do you recall reading that the market
3 reaction was that earnings had been spruced up by
4 heavy adjustments?

5 A. I don't recall that phrasing.

6 Q. And who -- who was the lender on that
7 transaction?

8 A. Again, I don't recall.

9 Q. You don't recall one way or the other
10 whether it was Morgan Stanley?

11 A. I really don't recall if it was Morgan
12 Stanley.

13 Q. But you -- you had worked at
14 Morgan Stanley, right?

15 A. Yes, I had.

16 Q. Okay. And, nonetheless, you don't
17 remember if they were involved in a financing
18 transaction, involved hundreds of millions of
19 dollars for a portfolio company that you were on the
20 advisory board of?

21 MR. LEON: Object to form. Asked and
22 answered.

23 Q. Is that correct?

24 A. I don't recall who the investment banker
25 was on the refinancing transaction.

1 MR. LEON: If you're going to ask
2 questions about the substance, can he have a
3 minute to review the article?

4 MR. ROSENBAUM: Sure.

5 (Witness reviewing document.)

6 Q. Have you read it?

7 A. Yes, I have.

8 Q. The -- so Mr. Pruss forwarded this article
9 to you on May 15, 2019. Do you understand that
10 based on your review of the document?

11 A. Sorry?

12 Q. Mr. Pruss forwarded this article to you on
13 May 15, 2019. Do you understand that based on your
14 review of this document?

15 A. Yes, I do.

16 Q. And that was during the time that
17 Project Sky was underway. Do I have that right?

18 A. I believe this was during the -- the
19 beginnings of Project Sky.

20 Q. And the -- the article, it appears, is
21 from late 2018; is that right?

22 A. From here, it appears, yes.

23 Q. Okay. And did -- in 2018, did you see
24 this article or any articles like it?

25 A. I don't know if I saw this article. I had

1 the way down from the article, under the -- you see
2 the heading, "Puffy Adjustments"?

3 A. I see that.

4 Q. Okay.

5 It says, Management-normalized LTM EBITDA
6 to September was just 38.4 million euro, although
7 the Cats-Hansel and Nimax and UNI Packaging
8 acquisitions will add some 14.7 million of EBITDA,
9 taking the figure to 53.1, which suggests leverage
10 closer to 5.7X.

11 You see that?

12 A. I see that.

13 Q. Do you have an understanding what that
14 means?

15 A. Yes, I do.

16 Q. What?

17 A. It means that they added -- they added the
18 LTM EBITDA through September, there were
19 two acquisitions that they included in adjusted
20 EBITDA, which got it to 53.1, and that the proposed
21 leverage was closer to 5.7 times that adjusted
22 number.

23 Q. What does "5.7 times leverage" mean, in
24 your opinion?

25 A. It means the amount of debt divided by the

1 EBITDA, the adjusted EBITDA was 5.7.

2 Q. It continues, But even those figures
3 contain heavy add-backs.

4 Do you know what "add-backs" are?

5 A. Yes. Add-backs to financial statements.

6 Q. Such as euro 10 million of management
7 normalization for transaction restructuring cost.

8 It continues, Actual reported EBITDA,
9 excluding the earnings contribution from recent
10 acquisitions was just 26 million EUR.

11 Do you have an understanding what that
12 meant?

13 A. I do.

14 Q. What does that mean?

15 A. It means as it says, the actual reported
16 EBITDA, excluding the earnings from the acquisitions
17 that had been recently done, was 26 million euros.

18 Q. And it continues, The EBITDA adjustments
19 were very aggressive. The second buyer agreed.
20 Working off a more realistic EBITDA means leverage
21 is much higher than advertised by the arrangers.

22 Do you have an understanding what that
23 meant?

24 A. I do.

25 Q. What?

1 A. The opinion of a buy sider, someone
2 investing in the loan, is that the adjustments were
3 aggressive and that the leverage would be higher
4 with lower EBITDA.

5 Q. And it -- it then has a section entitled
6 "Poor Cash Generation." Did Schur have poor cash
7 generation as of year end 2018?

8 A. I don't recall its cash generation.

9 Q. So you don't recall whether this article
10 is accurate in that respect?

11 A. I don't recall if it's accurate.

12 Q. It says, on the following page, Based on
13 actual EBITDA, they don't generate cash, and even on
14 their own forecasts cash generation in 2019-'20 will
15 be minimal while the integration process is ongoing.

16 Do you agree with that?

17 A. I don't agree -- I don't know what
18 forecasts -- I don't have in front of me what
19 forecasts they were looking at for 2019 and 2020.

20 Q. And then further down on that page, it
21 says, This deal is one of the worst I've seen in
22 terms of lack of information.

23 Did you hear that?

24 A. No.

25 Q. Well, you saw it in this article. Other

1 than this article, did you hear that from the market
2 about the dividend recap?

3 A. I did not.

4 Q. When was Goldman engaged for purposes of
5 Project Sky, if you recall?

6 A. I don't recall when.

7 Q. Okay. But you -- you did recall that May
8 of 2019 was when Project Sky was just about getting
9 started? Do I have that right?

10 A. Yes.

11 Q. Okay. Do you recall, you know, by August
12 of 2019 being concerned regarding the interest level
13 of European sponsors in Schur?

14 A. I don't recall that.

15 (Email dated August 20, 2019 from Mr. Dees
16 to Sarah-MarieMartin@GS.com was marked Dees
17 Exhibit 21 for identification, as of this
18 date.)

19 (Witness reviewing document.)

20 Q. Showing you what's been marked as Dees 21
21 for identification. It's an email dated August 20,
22 2019 from you to Sarah-Marie Martin at GS.com. Who
23 is Sarah-Marie Martin?

24 A. She is a former employee of Goldman Sachs.

25 Q. And you wrote to her, I had a long call

1 today with Christopher and Tobias.

2 Who are they?

3 A. I recall that's Christopher Droege and
4 Tobias Koester.

5 Q. Are they both with Goldman?

6 A. At that time they were.

7 Q. Where are they located?

8 A. In Europe.

9 Q. Where is Sarah-Marie Martin located?

10 A. She is located in the U.S.

11 Q. In New York, at Goldman Sachs?

12 A. I believe so.

13 Q. What was her role in Project Sky?

14 A. I do not believe she had a direct role in
15 Project Sky.

16 Q. Well, you were communicating with her
17 about Project Sky, correct?

18 A. Yes, I was.

19 Q. So she had a role of some sort, no?

20 A. She was a relationship investment banker
21 at Goldman Sachs.

22 Q. Was -- what did that mean in the context
23 of Project Sky?

24 A. Nothing in particular with respect to
25 Project Sky.

181

163

1 Q. Why were you writing to her?

2 A. Because she worked at Goldman Sachs, and I
3 had talked to her for a long time.

4 Q. Did you have a relationship with her prior
5 to this transaction?

6 A. Yes.

7 Q. And you worked with Goldman Sachs before
8 on transactions?

9 A. Yes.

10 Q. Was she a principal point of contact for
11 you at Goldman Sachs?

12 A. She was one of them.

13 Q. And you -- you continue, I am concerned
14 about the interest level of the European sponsors in
15 Schur.

16 And then you indicate you'll write a more
17 specific email.

18 Does that refresh your memory that as of
19 August 2019 you were concerned about the interest of
20 European sponsors in Schur?

21 A. I can only read what's in this email. I
22 don't recall the -- the details of why I would have
23 written this email.

24 Q. You have no doubt that you were telling
25 her the truth, it's still your perception at the

1 time, though, correct?

2 A. I have no doubt it was my perception when
3 I wrote the email.

4 Q. And do you have any memory as to why it
5 was you had concerns regarding the level of interest
6 by European sponsors as of this time?

7 A. It was certainly based upon the call I had
8 had earlier in that day with Christopher and Tobias.

9 Q. So you can -- presumably they communicated
10 to you that there was some lack of interest by
11 European sponsors. Is that fair?

12 A. They communicated something to me that had
13 me write this email.

14 Q. And when you say "European sponsors," what
15 do you mean?

16 A. I mean sponsors who are based in Europe.

17 Q. But "sponsor" signifies a private equity
18 sponsor or some other type of market participant?

19 A. A private equity sponsor.

20 Q. So when you wrote "European sponsors," you
21 meant Europe private equity sponsors. Is that -- is
22 that fair?

23 A. That is fair.

24 Q. And shortly after that interaction with
25 Ms. Martin, you -- you had communicated a status

1 name of Partners Group?

2 A. I am.

3 Q. What is Partners Group?

4 A. They are a private equity firm.

5 Q. Are they European or -- or U.S. based?

6 A. European.

7 Q. And were they a participant in

8 Project Sky?

9 A. They were.

10 Q. In what way?

11 A. They were a participant in the process.

12 They were a bidder in the process.

13 Q. And do you recall a person by the name of

14 Michael Sexton at Partners Group?

15 A. I -- I recall the name, but I don't recall

16 much else.

17 Q. I -- and was understanding EBITDA the

18 highest priority of Partner Group's diligence?

19 MR. LEON: Object to form.

20 Q. To your knowledge?

21 MR. LEON: Speculation.

22 A. I don't know what the highest priority of

23 Partners Group was in their diligence.

24 (Email from Michael Sexton to Christina

25 Bosse-Janzing dated September 3, 2019, 1536,

1 was marked Dees Exhibit 23 for identification,
2 as of this date.)

3 (Witness reviewing document.).

4 Q. I'm showing you what's been marked as Dees
5 23 for identification. You can take a moment to
6 review it if you haven't.

7 (Witness reviewing document.)

8 A. I read it.

9 Q. Okay. So I want to look down at the email
10 from Michael Sexton to Christina Bosse-Janzing, it
11 appears, dated September 3, 2019, 1536, just to
12 orient you.

13 A. I see that.

14 Q. Okay. And then if you -- if you scroll up
15 with your eyes, it appears in the second email from
16 the top that an Andrew Oliver at Partners Group
17 forwards the email chain below that to you, Michael
18 Dees, on September 3, at 1:24 p.m.

19 Do I have that right?

20 A. That's what -- that's what it says.

21 Q. And the heading is "Project Sky Schur
22 Flexibles CEO meeting."

23 A. That is the title of the email.

24 Q. Okay. First of all, who is Andrew Oliver
25 at Partners Group?

1 Let me say it in a better way. Do you --
2 what was Andrew Oliver's position at Partners Group?

3 A. I don't recall his position at Partners
4 Group.

5 Q. Okay. And -- and is it your understanding
6 that this is referring to a meeting that Partners
7 Group was going to have with Schur's CEO,
8 Mr. Schernthaner, at this time?

9 A. Based on my reading of the email down
10 below, Next week's meeting with the CEO of Schur
11 Flexibles, it appears to be.

12 Q. Okay. And if -- if I look down now to the
13 email from Mr. Sexton to a number of people but not
14 you, addressed to Christina, again, 1536, it says,
15 Better understanding EBITDA remains our highest
16 priority diligence area.

17 And it goes on. Does that refresh your
18 memory that better understanding EBITDA remained
19 Partners Group's highest priority for diligence as
20 of September 2019 when this email was written?

21 MR. LEON: Object to form. Speculation.

22 A. All -- all I can say is that what it says
23 in this email on this day.

24 Q. And you received this email? It was
25 forwarded to you, correct?

1 A. It appears that I received this email.

2 Q. You write then -- I'm sorry, Mr. Oliver
3 writes to you, Michael, per your suggestion, reached
4 out to GS through my VP to get access to financials,
5 and it seems they won't be available for a meeting
6 with the CEO.

7 You see that?

8 A. I see that.

9 Q. Okay. And then you forward this on to
10 Mr. Unger, Thomas, let's discuss Partners Group when
11 we speak next.

12 Did you -- did you speak to the CEO about
13 this exchange, Mr. Schernthaner?

14 A. I don't recall that I did.

15 Q. Did you speak to Mr. Unger about this
16 exchange?

17 A. I don't know if I did.

18 Q. Do you recall doing anything after
19 receiving this email?

20 A. I -- I don't recall what I did after I
21 received this email.

22 Q. But by the middle of October of 2019, with
23 the exception of Partners, your understanding was
24 that parties in the market were not participating in
25 Project Sky because they thought Schur's EBITDA must

1 be overinflated.

2 Correct?

3 A. That was potentially one of the reasons.

4 Q. That's a reason that you believed, at that
5 time, that market participants were not
6 participating in Project Sky. Correct?

7 A. That's a reason I had been told.

8 Q. Who told you that?

9 A. It was likely Goldman Sachs.

10 Q. And that is information that you then
11 reported to Alan Goldberg, correct?

12 A. I believe I did.

13 (Email chain beginning with Bates number
14 LG 3660 was marked Dees Exhibit 24 for
15 identification, as of this date.)

16 Q. I'm showing you what's been marked as
17 Dees 24. And looking at the paragraph starting,
18 Other than Partners. Let me know when you're there.

19 A. Uh-huh.

20 Q. You wrote to Mr. Goldberg, Other than
21 Partners, the valuations are disappointing and the
22 number of bidders are disappointing.

23 While we do not know for certain, it
24 appears that many parties are not participating
25 because they think that, one, we are flipping this

191

173

1 asset very quickly after completing several add-on
2 acquisitions in 2018, and two, our EBITDA must be
3 overinflated somehow.

4 So that's -- those were the two statements
5 that you communicated to Alan Goldberg as to your
6 understanding why the market was not participating
7 at the level that you had hoped in Project Sky.
8 Fair?

9 A. Those were two reasons that I had heard
10 from advisors and, therefore, communicated.

11 Q. Okay. And that advisor was Goldman Sachs,
12 to your memory, that you heard that from.

13 A. It was likely them, but it could be
14 others.

15 Q. And you used the term "overinflated."

16 What does "overinflated" mean?

17 A. In this context, it meant that -- that the
18 buyers had a view that our adjusted EBITDA was
19 higher than their view of adjusted EBITDA.

20 Q. So if I'm hearing it right, it wasn't just
21 inflated but it was overinflated? That's the word
22 you chose, correct?

23 A. I don't -- parsing my language, I don't
24 know the difference between the two.

25 Q. Now, you were a member of the advisory

1 board, as we've long established, at Schur during
2 this time. Correct?

3 A. Correct.

4 Q. What did you do, after learning from
5 Goldman Sachs or other advisors that the market
6 believed Schur's EBITDA was overinflated, to satisfy
7 yourself that it was or was not overinflated?

8 MR. LEON: Object to form.

9 A. I did not believe there was anything I
10 needed to do. Potential buyers had one view of
11 adjusted EBITDA, we had a different view of adjusted
12 EBITDA.

13 Q. So you didn't do anything, as a member of
14 the advisory board, after receiving that information
15 from Goldman Sachs, or other advisors, correct?

16 MR. LEON: Object to form.

17 A. I did not.

18 Q. Okay.

19 MR. ROSENBAUM: Why don't we take dinner
20 break now. This is a good time to --

21 THE VIDEOGRAPHER: Time right now is
22 6:00 o'clock p.m. We're off the record.

23 (Dinner recess at 6:00)
24
25

1 Q. In the first bullet, it says, Your
2 statement is that we are, quote, vivid example of a
3 wide use of EBITDA adjustments across a wide range
4 of categories.

5 Do you recall the context for which
6 Moody's was apparently making that statement that
7 needed a response?

8 A. I do not.

9 Q. Were you involved in preparing a response?

10 A. I don't recall.

11 Q. And the second is -- says, You relate your
12 assessment to LTM June 2018 with a reboarded EBITDA
13 of 26 million and a PF adjusted EBITDA of
14 67 million, with the significant gap raising doubts
15 on future achievability.

16 Do you recall hearing that statement being
17 made by Moody's in the context of this script?

18 A. I do not.

19 Q. Okay. And were you involved in any
20 response to Moody's?

21 A. I was not.

22 Q. Are you aware of anyone having responded
23 to Moody's?

24 A. I don't know if anyone responded.

25 Q. You can put that to the side.

1 In your view, was Michael Schernthaner
2 showing disdain for Goldman Sachs?

3 A. That could be a word to describe how he
4 interacted with them.

5 Q. Okay. And why would you use the word
6 "disdain" to describe how Michael Schernthaner
7 interacted with Goldman Sachs?

8 A. He had difficult -- difficult interactions
9 with them.

10 Q. In what way?

11 A. He was short with them. He didn't like
12 the deadlines they put.

13 Q. Did you intervene in that?

14 A. I don't recall if I did.

15 Q. Was that of concern to you, that
16 Mr. Schernthaner was short with Goldman Sachs?

17 A. It was not a concern.

18 Q. Do you recall having to tell Partners that
19 Schur could not deliver the numbers that were
20 requested by Partners in the context of Project Sky?

21 MR. LEON: Object to form.

22 Q. You can answer.

23 A. I don't require that I had to provide that
24 message to Partners.

25 Q. Do you recall there being an issue that

1 will not respond to their request well.

2 Why did you believe that the meeting with
3 Michael S. carried a lot of risk?

4 A. I think, as I said, he will not respond to
5 this request well, which came from the -- one of the
6 emails earlier that you see where he said he could
7 not deliver these numbers.

8 Q. And Partners Group, you know, ultimately,
9 didn't submit any kind of binding proposal to -- for
10 the purchase of Schur, correct?

11 A. Correct.

12 Q. And they had -- they communicated that the
13 potential acquisition failed in their investment
14 committee? Do you recall that?

15 A. I don't recall what they communicated on
16 that topic.

17 Q. Okay. Did you learn that it was their
18 lack of trust in Schur's EBITDA that was the reason
19 for Partners Group not to proceed with an offer to
20 acquire Schur?

21 A. I don't know why Partners did not proceed
22 with an offer to buy Schur.

23 Q. Are you aware that Project Sky failed from
24 the point of view of Partners Group because the gap
25 between adjusted EBITDA and cash-based EBITDA was

1 too large, around 30 million euro?

2 A. I don't know the reason why it failed in
3 their investment committee.

4 Q. Would it surprise you that Mr. Fischkin
5 told the Austrian prosecutor that the reason that
6 Project Sky failed with Partners Group was the gap
7 between adjusted EBITDA and cash-based EBITDA was
8 too large and amounted to approximately 30 million
9 euro?

10 MR. LEON: Object to form. Foundation.

11 A. I can't assess whether or not Mr. Fischkin
12 talked to Partners Group.

13 Q. Did Mr. Unger talk to Partners Group?

14 A. I don't know.

15 Q. You don't know if Mr. Unger ever talked to
16 Partners Group?

17 A. I don't know if he ever talked to Partners
18 Group.

19 Q. Did Mr. Pruss talk to Partners Group?

20 A. I don't recall. You'd have to ask them.

21 Q. Are you aware that Mr. Unger told
22 Mr. Schernthaner not to give a reason why
23 Project Sky process was shortened?

24 A. I don't know what Mr. Unger told to
25 Mr. Schernthaner about Project Sky.

1 Q. And you didn't think about it?

2 MR. LEON: Object to form.

3 A. It didn't matter.

4 MR. LEON: Are we back to Dees 5?

5 MR. ROSENBAUM: No, no. I just -- I
6 couldn't find my copy, so I'm not there yet.

7 Q. What was Mr. Schernthaner's compensation
8 once he became CEO of Schur?

9 A. I don't know.

10 Q. You -- you recall, when we reviewed Dees 5
11 earlier, that among the rules of procedure were the
12 presentation of management to the advisory board of
13 salary and wages for certain employees. Does that
14 sound right?

15 A. Let me get back to Dees 5.

16 (Witness reviewing document.)

17 A. Could you point me to where that would be?

18 Q. Section -- well, page 6 of 9, or 13,
19 Section 8.2.

20 I'm sorry. It's 8.3.

21 A. 8.3.

22 I see that.

23 Q. It's your understanding that the amount of
24 compensation paid to the CEO was a decision of the
25 advisory board?

211

193

1 A. Yes, I do.

2 Q. And in your capacity as an advisory board
3 member, do you know what the agreed-upon
4 compensation was for Mr. Schernthaner in his
5 capacity as CEO of Schur?

6 A. I do not.

7 Q. Did you approve the compensation for
8 Mr. Schernthaner as CEO of Schur?

9 A. I can't recall if I specifically did.

10 Q. Okay. But you would agree that as
11 advisory board member, it was among your obligations
12 to have approved that compensation. Correct?

13 A. I understand per 8.3, that was an
14 obligation of the advisory board.

15 (Document in German and translated into
16 English, Managing Director Agreement, was
17 marked Dees Exhibit 29 for identification, as
18 of this date.)

19 Q. I'm showing you Dees 29. Have you seen
20 this document before?

21 A. I don't recall if I have.

22 Q. I want to turn your attention to page 5
23 von 19. The portion that's in English along -- on
24 the right-hand side.

25 A. I see that.

1 Q. First of all, do you agree with me that
2 this appears to be an employment contract between
3 Schur and Michael Schernthaner?

4 A. It appears that way.

5 Q. Okay. And it -- it states, on page 5 of
6 19, Starting on 1 July 2019, the managing director
7 receives an annual salary of 400,000 euro gross for
8 his activity. And it continues.

9 You see that?

10 A. I see that.

11 Q. Subsection 3 says, The managing director
12 also receives an annual bonus measured by the
13 achievements -- the achievement of targets set by
14 chairman of the advisory board. See below.

15 Mr. Unger was chairman of the advisory
16 board?

17 A. Yes, he was.

18 Q. And it continues, At the beginning of each
19 financial year, the chairman of the advisory board
20 agrees with the managing director on the targets
21 relevant for allocation of the bonus. The bonus
22 amounts to 400,000 euro, if 100 percent of these
23 targets are achieved.

24 You see that?

25 A. I see that.

1 Q. As an advisory board member, were you
2 aware that Mr. Schernthaner was to receive a
3 400,000 euro bonus if 100 percent of his targets
4 were achieved?

5 A. I don't recall if I was.

6 Q. You ever seen any minutes reflecting
7 approval of Mr. Schernthaner's compensation?

8 A. I can't recall if I have.

9 Q. Were minutes kept by the -- by the
10 advisory board?

11 A. I can't recall.

12 Q. Do you know whether minutes were decided
13 not to be kept by the advisory board?

14 MR. LEON: Object to form.

15 A. I can't -- I can't recall that either.

16 Q. You're on seven to ten boards. Would you
17 agree that it is typical that boards prepare minutes
18 for their regular meetings, in your experience?

19 A. In my experience, there's a wide range of
20 minutes. Some boards prepare them, some boards do
21 not, in the middle, there's a range of minutes.

22 Q. You -- so -- so other than Schur, you're
23 on boards that do not prepare minutes for their
24 meetings. Is that your testimony?

25 A. That is my testimony.

1 Q. For a -- for formal meetings of the board,
2 no minutes are taken.

3 MR. LEON: Object to form.

4 Q. I just want to make sure --

5 A. Yes.

6 Q. -- I understand that.

7 A. Yes.

8 Q. Okay. And in those -- where no minutes
9 are taken, are resolutions recorded?

10 A. I don't recall if they are.

11 Q. Okay. So you consider it to be a normal
12 practice for boards to meet, make decisions, and not
13 record them? Do I have that right?

14 A. No, I said it's not unusual.

15 Q. Well, what's the difference between not
16 unusual and typical?

17 A. I said there's a wide range of practices
18 that boards undertake.

19 Q. Okay. On boards that you sit on, what
20 would you consider to be the better practice, taking
21 minutes and recording decisions, or not?

22 MR. LEON: Object to form.

23 A. I said there's a wide range of practices
24 these boards undertake.

25 Q. But you're sitting here today, you --

197

1 you -- you agreed with me that there's an obligation
2 of the advisory board to approve Mr. Schernthaner's
3 compensation. Correct?

4 A. I agree with you what the document said.

5 Q. Yeah. And -- that's what it said,
6 correct?

7 A. That's what -- that's what the document
8 said on that topic.

9 Q. Right. And you -- you -- are you aware of
10 any record, minutes, resolution, or otherwise, of
11 the advisory board approving Mr. Schernthaner's
12 compensation?

13 A. I can't recall of the records with respect
14 to that.

15 Q. And don't you think it would be better
16 practice, then, so that if I was asking you this
17 question today, you could point to a minutes or
18 resolution that would say, you did this, or didn't
19 do it? Right?

20 MR. LEON: Object to form. It's just
21 argumentative, Zach.

22 MR. ROSENBAUM: No, it's actually not.
23 We're sitting here today --

24 MR. LEON: Yes, it is.

25 MR. ROSENBAUM: -- I'm asking him

1 questions. He -- he confirmed there was an
2 obligation, and he has no idea whether it
3 happened because there are no minutes. That's
4 not argument, those are facts.

5 MR. LEON: He said he doesn't recall.

6 A. It would make the discussion with you
7 shorter.

8 Q. And, therefore, good practice, no?

9 A. No, therefore, the discussion would be
10 shorter.

11 Q. Because we would know if you -- it
12 undertook an obligation, correct?

13 A. I could provide you minutes.

14 Q. Yeah. And you can't provide me minutes of
15 the approval of Mr. Schernthaner's compensation?

16 A. I cannot do that. I don't know if someone
17 else could.

18 Q. But you didn't see any minutes that you
19 recall, right?

20 A. I said I did not.

21 Q. Okay.

22 Continuing, it says, in -- under the
23 heading, "Salaries," The bonus increases or
24 decreases in proportion to whether the targets are
25 exceeded or not reached. However, it shall -- it

1 shall not exceed 1.5 times this amount, i.e.,
2 600,000 euro.

3 Do you see that?

4 A. I see that.

5 Q. In your capacity as advisory board member
6 of Schur, at this time, were you aware that there
7 was a maximum bonus of 600,000 euro for
8 Mr. Schernthaner?

9 A. I don't recall.

10 Q. I may have asked you this, but do you know
11 what Mr. Schernthaner's total bonus compensation was
12 for 2019?

13 A. I do not.

14 (Certified English translation of a
15 document originally in German was marked Dees
16 Exhibit 30 for identification, as of this
17 date.)

18 Q. I'm showing you what's been marked as
19 Dees 30, which is a submission in the criminal case
20 that is the subject of this examination.

21 I want to turn your attention to page 15
22 of 29, and -- and I'll note for the record, this is
23 an English -- certified English translation of a
24 document that was originally in German.

25 Looking at page 15 of 29. Yeah, for the

1 record, the -- the -- the exhibit before the witness
2 has both the original German and the certified
3 translation into English. The version I have in
4 front of me is only the English.

5 So the record -- the actual exhibit is
6 correct.

7 On page 15 of 19, on the top-hand portion,
8 it says, In 2019, the defendant had himself paid out
9 in each case, in addition to his annual salary,
10 3,045,956 euro.

11 Were you aware that Mr. Schernthaner
12 received a bonus, for 2019, of 3 -- over
13 3 million euro?

14 A. I was not aware of that.

15 Q. And since there's a fair amount of things
16 you said you didn't recall, you are confident that
17 you did not know that fact as an advisory board
18 member, correct?

19 A. I'm confident I did not know that fact.
20 Or did not know that -- I don't know if these are
21 facts. So this is the first time I've seen this
22 document.

23 Q. But if that -- if that statement is, in
24 fact, correct, you never heard that in your capacity
25 as advisory board member of Schur, correct?

1 A. Correct.

2 Q. And you would have expected that you
3 should have not only known that, but approved it,
4 correct?

5 MR. LEON: Object to form.

6 A. I would have expected to know that.

7 Q. Would you have also expected to have
8 approved it?

9 A. I would expect to have approved an
10 agreement that allowed him to have that bonus.

11 Q. That sentence continues, In year 2020, a
12 total of \$4,954,899.46 in bonuses was paid to
13 Mr. Schernthaner.

14 In your capacity as advisory board member
15 for Schur, did you know that fact?

16 A. I don't -- I don't recall knowing that
17 fact.

18 Q. And you expect that if that fact is true,
19 you would have known it, correct, in your capacity
20 as advisory board member?

21 A. I expect that I would have known it.

22 Q. Do you expect that Mr. Unger would have
23 known it too?

24 A. Yes.

25 Q. Did Mr. Unger ever tell you he approved

1 that bonus?

2 A. I don't recall.

3 Q. Did -- well, you said you didn't know
4 about it. So --

5 A. I don't recall him telling me.

6 Q. And same for 2019, Mr. -- I take it
7 Mr. Unger never told you he approved the bonus for
8 that year either to Mr. Schernthaner, correct?

9 A. I don't recall him telling me that.

10 Q. And it continues in the next paragraph,
11 The bonuses actually paid out were recognized under
12 other cost item, for example, as refinancing costs,
13 to conceal them, as additional bonus provisions
14 would have burdened EBITDA.

15 Were you aware that these bonuses were
16 capitalized by Schur for the years 2019 and 2020?

17 A. I'm not aware of any of this, and I'm
18 unable to assess any of what's being written here.

19 Q. So me presenting you with this information
20 is the first time you're hearing it?

21 A. Yes.

22 Q. I take it that's concerning to you if that
23 information is true?

24 MR. LEON: Object to form.

25 A. I -- I am unable to determine if this is

1 true.

2 Q. But if it were true and it's in a document
3 that the prosecutor prepared in Austria, would it be
4 concerning to you as a former member of Schur's
5 advisory board?

6 MR. LEON: Object to form.

7 A. I would need to understand what happened,
8 what it was -- I don't have any assessment on what
9 was paid, why it was paid, whether it was paid, I
10 have no information on that.

11 Q. Isn't -- isn't that itself concerning
12 since you sat on the advisory board and were
13 supposed to know those facts?

14 A. As I say, I don't have any information on
15 that.

16 Q. I understand that. But isn't that of
17 concern to you that you do not have any information
18 on that?

19 A. I'm not able to make that determination
20 because I don't have any ability to assess what's
21 being written here.

22 Q. So is it not concerning -- I'm just trying
23 to understand, like, what you care about. Sitting
24 on the advisory board, would you care that in
25 two years the CEO was paid 8 million euro in bonuses

1 that you weren't told about? Yes or no?

2 A. I'm not going to speculate about something
3 that I -- is entirely hypothetical. I do not know
4 if any of this is true or any of the context of
5 this --

6 Q. I get that. You just said it, this is the
7 first you're hearing of it. So I want you to assume
8 one thing, that it's true. Would it then concern
9 you?

10 MR. LEON: Objection. Improper
11 hypothetical. You know you're not supposed
12 to --

13 MR. ROSENBAUM: It's not improper. It's
14 perfectly proper.

15 MR. LEON: You're not supposed to ask
16 hypotheticals of fact witnesses. We both know
17 that.

18 MR. ROSENBAUM: That's not even true. But
19 go ahead --

20 MR. LEON: That's a hundred percent true.

21 MR. ROSENBAUM: That's not true. He was
22 an advisory board member. He is being
23 presented with facts about \$8 million in
24 bonuses that he -- in euros that he wasn't
25 aware of.

1 MR. LEON: I --

2 MR. ROSENBAUM: It's very simple to ask.

3 I don't know why it -- you're resisting it.

4 Q. I imagine it would be very concerning to
5 you, and it's shocking to think it wouldn't be.

6 Would it be concerning to you as an advisory board
7 member who was -- who --

8 MR. LEON: Just ask the question.

9 MR. ROSENBAUM: No.

10 Q. -- that you weren't told of these bonuses?

11 MR. LEON: Object to form. Same
12 objection.

13 A. You're asking me to speculate about a
14 hypothetical that you have just created.

15 Q. I -- it's not a hypothetical. I'm asking
16 you to read a document and assume it's true. That
17 is not a hypothetical.

18 A. It's very difficult to answer a question
19 when it's simply a hypothetical, assume something is
20 true that is dozens and dozens of pages, and I have
21 never seen this document before.

22 Q. So, then, I take it, then, it wouldn't be
23 concerning to you if that happened?

24 A. Same -- it's hard to answer that question
25 when you have presented me a paragraph in a very

1 long document I've never seen before.

2 Q. Would you consider CEO bonuses capex?

3 MR. LEON: Object to form.

4 A. I do not know in what context a bonus was
5 paid.

6 Q. I'm not asking you that. As a general
7 matter, you already -- we already talked about what
8 capex is. Do you, Michael Dees, in your experience
9 as a financial professional, consider bonuses paid
10 to a CEO capex?

11 MR. LEON: Object to form.

12 A. There are bonuses that are expensed.

13 Q. Did you -- were you aware that these
14 bonuses were being expensed?

15 A. I was not aware of these bonuses.

16 Q. Bonuses -- when you says "bonuses are
17 being expensed," you're aware of bonuses that are
18 treated as capital expenditures?

19 A. There are situations in which bonuses are
20 capitalized.

21 Q. Give me one example.

22 A. A bonus with respect to an acquisition. A
23 bonus with respect to a refinancing could be.

24 Q. Was Mr. Schernthaner paid a bonus in 2019
25 with respect to a refinancing?

1 A. As I said, I don't know if he was paid a
2 bonus with respect to that in 2019.

3 Q. And was he paid a bonus in 2020 with
4 respect to refinancing or an acquisition?

5 A. I don't know if he was paid a bonus.

6 Q. Staying in -- in the year 2021, what
7 was -- if you recall, happened to raw material
8 prices in 2021 with respect to Schur?

9 A. As I recall, near the end of the year they
10 were increasing.

11 Q. Only near the end of the year, not earlier
12 than the end of the year?

13 A. I -- the second half of the year -- I
14 don't know if it was earlier than the second half of
15 the year, but the second half of the year.

16 Q. Okay. Do you recall that shortly after
17 the share purchase agreement was signed with B&C,
18 raw material prices spiked? Does that sound right
19 to you?

20 A. I don't recall when in '21 they spiked.

21 Q. But you recall somewhere in '21 they
22 spiked?

23 A. I do.

24 Q. And were you aware that Mr. Schernthaner
25 and Mr. Fischkin, in July of 2021, set up an account

1 that -- in order to transfer 4 million euros to a
2 company controlled by Mr. Schernthaner from Schur?

3 A. I was not aware of that.

4 Q. Is that something that as an advisory
5 board member you would have expected to be aware of?

6 A. I would expect that been to -- that to
7 have been disclosed.

8 Q. And so your testimony is it was not?

9 A. That is my testimony.

10 Q. But this isn't the first you're hearing
11 about that subject, correct?

12 MR. LEON: Let me just caution the
13 witness, in answering the question, you are not
14 to disclose anything you learned in
15 communications with counsel. If you learned it
16 outside of communications with counsel, you can
17 discuss that.

18 You understand the instruction?

19 THE WITNESS: Yes.

20 MR. LEON: Okay.

21 A. I'm not going to answer the question.

22 Q. But that is a subject you talked to the
23 Austrian prosecutor about, correct?

24 A. I believe it is.

25 Q. And do you have any understanding, sitting

1 here today, whether that payment was made?

2 MR. LEON: Object to form. What payment?

3 Q. Payment of 4 million euro from Schur to an
4 account set up by Mr. Schernthaner and Mr. Fischkin,
5 that was then transferred to Mr. Schernthaner's
6 company named Pure Performance?

7 A. I learned that through discussions with
8 counsel.

9 MR. LEON: Should have had some --

10 Q. That's privileged anyway, but you don't --
11 you don't have to tell me what counsel told you
12 about that.

13 MR. LEON: Thank you.

14 Q. Okay. So -- and you -- you -- did you
15 ever hear -- again, if you only heard it from
16 counsel, your counsel can give you an instruction,
17 that Mr. Schernthaner subsequently called that
18 transfer of money a loan?

19 MR. LEON: Again, if your only knowledge
20 on this comes from discussions with counsel, I
21 instruct you not to answer.

22 If you have knowledge outside of
23 discussions with counsel, this is something you
24 discussed with the Austrian prosecutor, for
25 example, that you can disclose.

1 Do you understand the instruction?

2 THE WITNESS: If I discussed -- if I
3 learned it from counsel, do you want --

4 MR. LEON: Can -- can I take him outside
5 quick? Thanks. Real quick.

6 THE VIDEOGRAPHER: The time right now is
7 7:41 p.m. We're off the record.

8 (Discussion off the record.)

9 THE VIDEOGRAPHER: The time right now is
10 7:43 p.m. We are back on the record.

11 Q. Mr. Dees, you spoke to the Austrian
12 prosecutor about this 4 million euro transfer that
13 we've been discussing now tonight. Do I have that
14 right?

15 A. Yes, you do.

16 Q. Okay. What did you say to the prosecutor
17 about that?

18 A. I said I was not aware of that transfer
19 when it happened.

20 Q. What did the prosecutor say to you on that
21 subject?

22 A. I don't recall.

23 Q. Now, you recall that it was the summer of
24 2021 that you came to understand that transfer
25 occurred? Is that fair?

1 A. I -- I believe that was the timing that
2 would have occurred.

3 Q. And Schur needed every euro possible in
4 the summer of 2021 because of its cash situation.
5 Isn't that true?

6 A. I don't recall if that's true.

7 Q. You would expect that Mr. Humer would have
8 a good sense of Schur's cash position in the summer
9 of 2021. Correct?

10 A. I did not expect that he would.

11 Q. Did you -- do you believe you had an
12 understanding of Schur's cash position in the summer
13 of 2021?

14 A. I don't think I had a particularly good
15 understanding of its position.

16 Q. So then you don't know whether Schur had a
17 good cash position at that time or bad one. Is that
18 fair?

19 A. That is fair.

20 Q. Okay.

21 Did you ever come to learn that
22 Mr. Humer's signature was placed on what was called
23 a loan agreement, unbeknownst to him?

24 A. I did not.

25 Q. Would it concern you if the CEO and

1 Mr. Fischkin, director of finance, appeared to be
2 forging other officers' signatures on documents
3 concerning a transfer of money to Mr. Schernthaner?

4 MR. LEON: Objection --

5 Q. Would that concern you?

6 A. All that would be difficult for me to
7 assess. I haven't talked to Mr. Humer, I haven't
8 seen the documents. It's difficult for me to assess
9 that.

10 Q. Okay. But you -- you -- you recognize you
11 sat on the advisory board of this company, and all
12 I'm asking you is if you -- if these facts were
13 presented to you, would they be of concern to you in
14 that capacity, and it seems like you're resisting
15 the answer. So --

16 A. No.

17 Q. -- yes or no.

18 MR. LEON: Objection. Improper
19 hypothetical.

20 A. If there were verified forged documents,
21 it would be concerning.

22 Q. Okay. And if there were verified payment
23 of transfer of 4 million euro to the CEO that was
24 unauthorized by you on the advisory board, that
25 would be concerning too?

231

213

1 A. Yes.

2 Q. And if that happened at a time when a
3 company's cash position was weak, that would also be
4 concerning to you, correct?

5 MR. LEON: Object to form.

6 A. Regardless of when it happened, it would
7 be concerning.

8 Q. Now, you can take a look at page 9 of 28
9 on this --

10 A. 9 --

11 Q. -- same document.

12 A. 9 of 28. Or --

13 Q. Dees 30.

14 A. Sorry. There's a lot of "of 20."

15 Q. I'm sorry, 9 of 29.

16 A. It would have two translations or --

17 Q. You might -- it's the English one. Would
18 be easier for you --

19 A. I just have two copies of it.

20 Q. Oh.

21 A. There's two copies included in here.

22 Q. Oh. Is there a German one too?

23 A. There's -- yeah, don't ask me about that.
24 There's German.

25 Q. But you have -- you have page 9 of 29 in

1 front of you. That's in English.

2 A. I do.

3 Q. Now, I want you to look at the -- the
4 second paragraph, or maybe the third full paragraph,
5 starting -- starting with, According to signatures.

6 You see that?

7 A. According -- sorry. You said second
8 paragraph -- oh. According to the signatures.
9 Okay.

10 Q. It states, According to the signatures on
11 the present loan agreement, it was signed jointly by
12 Dr. Michael Fischkin and Friedrich Humer on behalf
13 of lender SFH.

14 When asked about this in his testimony
15 before the Korneuburg regional court,
16 Friedrich Humer stated he had no recollection of
17 this document and, therefore, could not remember
18 signing it, nor had such a loan ever been discussed
19 by management.

20 He continued, He would certainly have
21 questioned such a request because -- in italics,
22 because we needed every euro in the summer of 2021,
23 given the cash situation. It was the case that we
24 had regular meetings starting in the spring on how
25 to improve the cash situation in the group. These

215

233

1 were held under the direction of Dr. Fischkin, with
2 the heads of various plants and the finance
3 department and also myself. Against this background
4 the request for 4 million euro would, of course,
5 have had to be questioned.

6 Do you have any reason to disagree with
7 the statements of Mr. Humer that I just read to you?

8 MR. LEON: Object to form.

9 Foundation.

10 A. I -- I have no reason to disagree with it,
11 but I've never spoken to Mr. Humer about any of
12 this.

13 Q. You signed an agreement with
14 Mr. Schernthaner concerning a payment for initiation
15 commission with respect to the B&C sale transaction.
16 Do I have that right?

17 A. I don't recall the agreement I signed.

18 Q. Do you recall that you were involved with
19 the decision to make a payment to Mr. Schernthaner
20 in connection with the B&C sale transaction?

21 A. Yes, I do.

22 Q. Okay. Do you recall that it was an
23 initiation commission?

24 A. I do not recall that.

25 Q. Okay. Do you have an understanding of

1 what an initiation commission is?

2 A. I don't. I've never used that term
3 before.

4 Q. Well, I think you did.

5 (Email exchange beginning with Bates LG
6 28890 was marked Dees Exhibit 31 for
7 identification, as of this date.)

8 Q. Showing you 31, what's been marked as
9 Dees 31 for identification.

10 Have you reviewed it?

11 A. Yes, I have.

12 Q. Have you reviewed the attachment?

13 A. I -- I've reviewed the page.

14 Q. And if you go to the bottom right-hand
15 corner, LG 28892, your signature is affixed on
16 behalf of Atlas Flexibles Coöperatief UA. Is that
17 right?

18 A. Yes.

19 Q. And Atlas -- if I recall the chart we
20 looked at earlier, Atlas Flexibles Coöperatief U.A.
21 was the -- was a shareholder of the company that
22 owned Schur Flexibles. Do I have that right?

23 I -- we can get a little more granular
24 because I'm probably not saying it well, but I just
25 want to make sure you and I are in alignment.

1 A. It's a shareholder of a company that owns
2 the Schur Flexibles business.

3 Q. And if I have it right, Atlas Flexibles
4 Coöperatief owned approximately 85 percent of the
5 Schur Flexibles Group. Is that fair?

6 A. That is fair.

7 Q. And the other 15 percent, as we talked
8 about earlier, was owned by Lindsay Goldberg Europe.
9 I have that right?

10 A. Yes, you do.

11 Q. Okay. And so this reflected work that
12 Mr. Schernthaner was doing for Atlas Flexibles
13 Coöperatief in connection with the Schur -- I'm
14 sorry, the B&C sale transaction. Correct?

15 A. Correct.

16 Q. And it's labeled "An Initiation
17 Commission," so you understand that he was being
18 paid a percentage of the transaction price as a
19 commission for that work. Is that correct?

20 A. I -- I don't know if he's being paid a
21 percentage. I see here he's being paid
22 3.9 million euros.

23 Q. And that was to be split roughly
24 85 percent by Atlas Coöperatief and 15 percent by
25 Lindsay Goldberg Europe. Correct?

1 A. Correct.

2 Q. And that was to reflect the ownership
3 split between those entities. Is that -- do I have
4 that right?

5 A. Yes, you do.

6 Q. Okay. And now having looked at it, what
7 is an "initiation commission"?

8 A. Looking at this, I still don't know what
9 it is. I know there's a payment. I don't know why
10 it's called an initiation commission.

11 Q. But you signed something that said it was
12 an initiation commission. Right?

13 A. Yes.

14 Q. Did Mr. Schernthaner source the
15 transaction with B&C?

16 A. I don't recall.

17 Q. Do you recall who sourced the transaction?

18 A. I don't.

19 Q. Was this amount paid to Mr. Schernthaner
20 after the transaction with B&C closed?

21 A. I believe that it was.

22 Q. And just so I have this right, he was paid
23 by Atlas Co-op and LGE as they're defined in this
24 document, Dees 31, for the work he did in connection
25 with the B&C transaction. Correct?

1 A. I believe that he was.

2 MR. LEON: If you're switching subjects,
3 can we take a five-minute break?

4 MR. ROSENBAUM: Sure.

5 MR. LEON: Just five.

6 MR. ROSENBAUM: That's fine.

7 THE VIDEOGRAPHER: Time right now is
8 7:55 p.m. We're off the record.

9 (A recess was taken from 7:55 to 8:11.)

10 THE VIDEOGRAPHER: Time right now is
11 8:11 p.m. We're back on the record.

12 Q. Good evening, Mr. Dees. I want to turn
13 back to a document we've gone over a few times, but
14 I want to look at it again, Dees 5, the rules of
15 procedure in particular.

16 A. I'm looking.

17 I have it.

18 Q. We -- we were talking about minutes and
19 resolutions and, you know, writings with respect to
20 a board. I want to go back to this document for a
21 moment.

22 In the rules of procedure, page 4 of 9,
23 under Section 7.

24 A. Okay.

25 Q. You agree with me, under Section 2, The

1 management board, via the chairperson of the
2 management board, shall inform the advisory board in
3 particular of, A, actions for which the consent of
4 the advisory board is required, usually in writing,
5 and in sufficient time to allow the advisory board
6 sufficient time to consider its decisions.

7 You see that?

8 A. I do see that.

9 Q. Mr. Schernthaner was the chairperson of
10 the management board from the time he became CEO
11 forward during your tenure on the advisory board,
12 correct?

13 A. I believe so.

14 Q. And so you would agree with me that it was
15 the obligation of Mr. Schernthaner to inform the
16 advisory board of decisions that required advisory
17 board consent, usually in writing, correct?

18 MR. LEON: Object to form.

19 A. You said "decisions." It says "actions."

20 Q. Oh, I'm sorry. It says, Actions for which
21 the advisory board -- consent of the advisory board
22 is required.

23 Let me -- let me rephrase.

24 A. That's what it says.

25 Q. I know you're reading it correctly.

239

1 A. Yes.

2 Q. So my question was flawed, which is why
3 I'm going to ask it again. You're right.

4 The chairman of the management board,
5 Mr. Schernthaner, was required to inform the
6 advisory board of actions for which the consent of
7 the advisory board was required, usually in writing,
8 correct?

9 A. That's what it says, correct.

10 Q. So you understood that to be a requirement
11 of the management -- the chairman of the management
12 board, right?

13 A. Yes.

14 Q. Okay. And did Mr. Schernthaner present
15 information to the advisory board, usually in
16 writing, where advisory board consent was required?

17 MR. LEON: Object to form.

18 A. I don't recall the form in which he
19 provided that information.

20 Q. Okay. We -- we touched on this earlier.
21 But do you know whether a budget was provided by
22 Schur management to the advisory board in compliance
23 with the rules of procedure for the year 2020?

24 A. I don't know if it was.

25 Q. And we saw in -- in prior years, before

1 2020, budgets being provided to the advisory board
2 in the middle of December of the -- of the preceding
3 year. Does that sound right?

4 A. I think we talked earlier about 2017's
5 budget. I don't know about the other years.

6 Q. But you would expect if the rules of
7 procedure were being complied with, that the budget
8 would be provided ten days or more prior to the year
9 that the budget was for; is that right?

10 A. If they were complying with this document,
11 yes.

12 Q. I show you...

13 (Email between Philipp Schall and Daniel
14 Routh, dated March 19, 2020, heading "As
15 Discussed" was marked Dees Exhibit 32 for
16 identification, as of this date.)

17 Q. I'm showing you what has been marked as
18 Dees 31 for -- 32 for identification. And this is
19 an email between Philipp Schall and Daniel Routh,
20 dated March 19, 2020, heading "As Discussed."

21 Who is Philipp Schall?

22 A. He's an employee of Lindsay Goldberg
23 Europe, I think Europe or Vogel. I don't know about
24 the time.

25 Q. And who is Daniel Routh?

241

223

1 A. He's a former employee of Lindsay
2 Goldberg.

3 Q. If you look in this document, starting on
4 page LG 47264.

5 A. I see that page.

6 Q. It says, Budget 2020.

7 Right?

8 A. Yes.

9 Q. Okay. Are you aware of any other budget
10 being provided by Schur to you as advisory board
11 member for 2020?

12 A. I can't recall if I was provided a budget,
13 and I can't recall if I received this document.

14 Q. And that was my next question. So -- so
15 you don't know whether either Mr. Schall, Mr. Routh,
16 or anyone else provided you as an advisory board
17 member with a budget for 2020 from Schur management.
18 Do I have that right?

19 A. You do.

20 Q. And you don't know if you did receive one,
21 when you received it?

22 A. That's correct.

23 Q. And I'll represent for the record, this is
24 the only budget we've seen that came from Lindsay
25 Goldberg files. Are you aware of any other budget

1 for 2020, sitting here today?

2 A. I'm not aware of any other budget.

3 Q. And, again, you don't know if you received
4 a budget at all for that year.

5 A. Correct.

6 Q. But you would agree with me that it was an
7 obligation of the advisory board to have not only
8 received the budget for each year but to have
9 approved it, correct?

10 A. I think it was an obligation of the
11 management board to provide it. I don't know if the
12 advisory board had an obligation.

13 Q. Let's go to Section 9, page 6 of 9. Under
14 1, it says, The management board requires the
15 consent of the advisory board for the implementation
16 of the following measures and transactions, or the
17 assumption of obligations.

18 And it continues.

19 A is, Determination of the budget, capital
20 B, as well as determination and/or change of the
21 accounting and valuation.

22 That refresh your memory that it was a
23 requirement of management that the advisory board
24 consent to the budget?

25 A. That's what it says.

1 Q. Okay. And you don't know if you even got
2 a budget for 2020 as an advisory board member of
3 Schur, right?

4 A. Correct.

5 Q. Now, if you look in Dees 32, recognizing
6 that you don't recall having received or reviewed
7 it, on page -- if you go into LG 47273, let me know
8 when you're there.

9 A. I'm here.

10 Q. It budgets capital expenditures on a
11 site-by-site basis for 2020. I have that right?

12 A. It appears to.

13 Q. And then, below total capex plants of
14 16 million 8, are we in the same place?

15 A. Yes.

16 Q. It budgets additional capital expenditures
17 for footprints, cylinder and engravings, IT, R&D,
18 and other. You see that?

19 A. I see that.

20 Q. So Lindsay Goldberg, whether you or not,
21 was made aware in -- in 2020 of Schur's capital
22 expenditure budgets for that year of 2020, right?

23 A. At least one member of our team was
24 provided with this page.

25 Q. And as I look on the next page, capex cash

245

1 Q. Not on the bridge, as a general matter?

2 A. If it's a capital expenditure, it is not
3 deducted from EBITDA.

4 Q. But this bridge is just showing how much
5 of EBITDA is attributed to -- to expenditures that
6 can be capitalized. Do I have that right?

7 A. No, this is simply showing the amount of
8 capital expenditures. I -- I'm not entirely sure
9 where you're -- what you're asking.

10 Q. And you -- you would agree with me, if we
11 go back to Dees 5, for example, M --

12 A. Where are you again? 1 --

13 Q. Dees 5, pages 7 and 9.

14 A. 7 and 9, okay.

15 Q. Section 9M.

16 A. Yes.

17 Q. You would agree with me that any
18 unbudgeted investment projects of -- of more than
19 250,000 each for 2020 required a consent from you as
20 an advisory board member?

21 A. This document says that it would require
22 the advisory board consent.

23 Q. Did you give consent to any, for 2020,
24 unbudgeted investment projects?

25 A. I can't recall.

1 Q. So you might have, you just don't
2 remember?

3 A. I can't recall.

4 Q. And is that another area where minutes
5 would have helped?

6 MR. LEON: Object to form.

7 MR. ROSENBAUM: Yeah.

8 He said it would make the examination
9 shorter, so he understands.

10 A. Would certainly make the discussion
11 shorter.

12 Q. You're not aware of any minutes or board
13 resolutions approving investment projects for 2020
14 that were unbudgeted by the advisory board, correct?

15 A. Correct.

16 Q. Same question as to O, for any consultancy
17 agreements with an annual payment obligation towards
18 the -- the respective consultant of more than
19 200,000 altogether approved or consented to by the
20 advisory board for 2020?

21 A. I can't recall.

22 Q. I take it you haven't seen any minutes
23 or -- or resolutions reflecting that, right?

24 A. I have not.

25 (Shareholder resolution in the year 2022

1 appointing Deloitte as auditor for Schur group
2 was marked Dees Exhibit 33 for identification,
3 as of this date.)

4 Q. Did you sign a shareholder resolution in
5 the year 2022 appointing Deloitte as auditor for
6 Schur group?

7 A. Appears that I did.

8 Q. Did you see the audit of the consolidated
9 financial statements as of December 31, 2021
10 prepared by Deloitte?

11 A. I have not reviewed it.

12 Q. Are you aware of it?

13 A. I'm aware of it.

14 Q. You've never looked at it?

15 A. I've not reviewed it.

16 Q. Okay. Let's take a quick look at it.

17 MR. ROSENBAUM: Let's do an A and B, the
18 German and...

19 (German original audit of consolidated
20 financial statements as of December 31, 2021,
21 was marked Dees Exhibit 34A for identification,
22 as of this date.)

23 (Certified translation was marked Dees
24 Exhibit 34B for identification, as of this
25 date.)

1 Q. Showing you Dees 34B. Do you have a 34B
2 in front of you?

3 A. I do.

4 Q. Okay. And is that in English?

5 A. Yes, it is.

6 MR. ROSENBAUM: I'll represent for the
7 record that Dees 34A is German original audit
8 of consolidated financial statements as of
9 December 31, 2021, and B -- 34B is the
10 certified translations.

11 Q. If you could first turn to page 38.

12 A. Okay.

13 Q. Under the heading, "Error Corrections with
14 Regard to 2020 IFRS Consolidated Financial
15 Statements."

16 You see that?

17 A. I do.

18 Q. Okay. About halfway down the page, it
19 says, Description of the type of identified errors.

20 And it continues, The analysis of the
21 previous balance sheet preparation described in the
22 above paragraph showed that in numerous cases,
23 unjustified capitalizations occurred in the previous
24 periods without the prerequisites prescribed by IFRS
25 being met.

1 acquisition, total capex plants.

2 Do you see that?

3 And then below that, there are additional
4 items, Footprint, cylinder and engravings, IT, R&D,
5 and other.

6 You see that?

7 A. I see that.

8 Q. Okay. 2.6 million euro is listed next
9 to R&D.

10 Right?

11 A. It's next to R&D and other.

12 Q. Okay. You would agree with me if -- if
13 capitalized expenditures exceeded 2.6 million euro,
14 if this were a budget that were reviewed and
15 approved by the advisory board, additional approval
16 would be required. Fair?

17 A. I'd have to look back and see how it's
18 specified. I think it's by project. Isn't it by
19 project or overall?

20 Q. Well, by investment project.

21 A. Yes. And that's not an investment
22 project.

23 Q. Okay. Do you believe it would have needed
24 approval?

25 A. I'm saying, I don't think -- if we go back

1 to the document, I think the approval is by project,
2 not by category.

3 Q. But in any event, you didn't -- you don't
4 recall approving a budget for 2020, in any event?

5 A. As I said --

6 MR. LEON: Zach, I'm pretty sure we --

7 A. As I said --

8 MR. LEON: -- asked and answered that one.

9 A. As I've said --

10 Q. Fair enough.

11 A. -- I do not recall.

12 Q. If you go to page 40, Plant redesign and
13 ramp-up.

14 A. Wait, we're back in the audits?

15 Q. Yeah. 34B.

16 A. Okay.

17 Q. You see where -- the heading, "Property
18 Plant and Equipment Plant Redesign and Ramp-Up"?

19 A. Yes, I see that.

20 Q. Okay. Want to read it.

21 (Witness reviewing document.)

22 Q. Now flip over to page 53.

23 Did you see, next to ramp-up, parentheses,
24 Including trial runs and plant redesign, minus
25 28,000,737. There.

259

241

1 Feedback." Let me know if you're there.

2 A. I see that.

3 Q. Okay. Turn in to the document -- I'm
4 sorry.

5 If you look at the first page of the deck,
6 7025, it's called "Project Sky Initial Lender
7 Feedback, Goldman Sachs Bank Europe SE." So do you
8 have an understanding of what this -- this deck
9 reflects?

10 A. I think it reflects the initial lender
11 feedback Goldman Sachs received.

12 Q. Go to page 7028. Under the heading,
13 "J.P. Morgan," the second bullet, "Questions around
14 bad will adjustments of 30 million euro." Do you
15 recall that subject matter coming up in the context
16 of Project Sky?

17 A. I do not.

18 Q. Do you know what's referred to here by --
19 under the heading, "J.P. Morgan, Questions around
20 bad will adjustments"?

21 A. I don't recall.

22 Q. And do you recall whether bad will
23 adjustments were made on Schur's financial
24 statements for any year?

25 A. I don't recall.

1 Q. Do you recall the -- the -- the concept of
2 bad will in -- in connection with the acquisition by
3 Schur of a company called UNI Packaging?

4 A. I do not.

5 Q. Do you recall the acquisition by Schur of
6 a company called UNI Packaging?

7 A. I recall that Schur acquired a company by
8 that name.

9 Q. Okay. Do you recall whether that
10 acquisition had an impact on Schur's EBITDA?

11 A. I don't recall the quantum. I'm sure it
12 had some impact on EBITDA.

13 Q. Do you recall that Lindsay Goldberg
14 received monthly financial reporting from Schur?

15 A. I recall that.

16 Q. And Lindsay Goldberg also prepared a
17 quarterly portfolio review during the time it owned
18 Schur. Do I have that right?

19 A. It provide them -- it prepared them in
20 some quarters.

21 Q. What is a quarterly portfolio review?

22 A. It's a review of the performance of
23 certain portfolio companies on a quarterly basis.

24 Q. And for presentation to whom?

25 A. Partners of Lindsay Goldberg.

261

1 Q. Okay. Did Lindsay Goldberg also prepare
2 quarterly investment summaries for its investors
3 that would have reflected the performance of Schur?

4 A. I believe that it did.

5 Q. Okay. And did Lindsay Goldberg prepare
6 valuations of Schur at least twice a year?

7 A. Yes.

8 Q. Was -- were those valuations predicated on
9 Schur's EBITDA?

10 A. They were predicated on many different
11 metrics.

12 Q. And was EBITDA a metric for valuation used
13 by Lindsay Goldberg?

14 A. One of the metrics.

15 Q. Any other metrics?

16 A. Discounted cash flow was another metric.
17 And other multiples of financial metrics.

18 (Email from Connie Lu to, among others,
19 Maggie Hines, was marked Dees Exhibit 36 for
20 identification, as of this date.)

21 Q. Showing you what's been marked as Dees 36
22 for identification. It's an email from Connie Lu
23 to, among others, Maggie Hines.

24 A. Connie Lu to Maggie Hines?

25 MR. ROSENBAUM: I messed that up. Only

1 cannot expect my teams to do IFRS reporting packs on
2 a monthly basis.

3 You see that?

4 Yes, you see that?

5 A. Yes.

6 Q. And, then, above that, in German there is
7 an email between Mr. Schernthaner and Mr. Unger, and
8 if you flip into the document, where the translation
9 is -- let me know when you're there.

10 A. Uh-huh. I'm on the translation.

11 Q. This is Schernthaner saying to Unger,
12 Actually we had agreed with Michael Dees in
13 Frankfurt that he would, quote, manage, end quote,
14 reported EBITDA internally.

15 You see that?

16 A. I see that.

17 Q. Did you meet with Mr. Schernthaner and
18 Unger in Frankfurt, Germany, prior to this email?

19 A. At some point prior to this email, I met
20 in Frankfurt with him.

21 Q. Okay. And when you met with them in
22 Frankfurt, prior to this email, did you discuss
23 managing reported EBITDA internally at Lindsay
24 Goldberg?

25 A. I did not.

1 Q. Did that topic ever come up in a
2 conversation among you, Mr. Schernthaner, and
3 Mr. Unger?

4 A. It did not.

5 Q. So you have no idea what they're talking
6 about when they say, We had agreed with Michael Dees
7 in Frankfurt that he would manage reported EBITDA
8 internally?

9 A. I have no idea what they're talking about.

10 Q. And so you're denying that you agreed to
11 that with either Mr. Schernthaner or Unger. Is that
12 fair?

13 A. Yes.

14 Q. Does it concern you at all that they
15 believe that?

16 MR. LEON: Object to form.

17 A. I have no idea why they would write this.

18 Q. Going back to -- to Dees 36, which was the
19 valuation that we were looking at earlier.

20 A. Yes.

21 Q. If you go back also to the -- to the --
22 the attachment, page 1 of 9, I just want to make
23 sure we're in the same place.

24 A. I'm on 1 of 9.

25 Q. Okay. And there is a row that says,

1 A. There are many elements that go into how
2 we derive a valuation.

3 Q. I understand, but is one of them EBITDA?

4 A. We are not making any representations
5 about the components that go into the valuation.

6 Q. But you -- you put an EBITDA figure in
7 here. Right?

8 This -- that's all I'm asking you.

9 A. There's an EBITDA figure on this page.

10 Q. Okay. We can agree on that, right?

11 A. Yes, we can agree on that.

12 Q. Okay. And we can -- we also agree that
13 costs that are capitalized do not reduce EBITDA.
14 Correct?

15 A. Correct.

16 Q. But costs that are operating expenses do
17 reduce EBITDA. Correct?

18 A. Yes.

19 MR. LEON: Object to form.

20 Q. Yes?

21 A. Yes.

22 Q. Okay.

23 And, therefore, you would -- it would be
24 important for you to know what costs were
25 capitalized versus ones that were operating costs,

1 in making these representations to your investors.

2 Correct?

3 A. I am not making any representations to my
4 investors about the EBITDA.

5 Q. Do you make representations to your
6 investors about the valuation of Schur?

7 A. I believe we do.

8 Q. Okay. And would you agree with me that
9 EBITDA is a component of the valuation of Schur?

10 In the representations you made to your
11 investors.

12 A. EBITDA is one of the components in how we
13 consider the valuation of a company.

14 (Loan agreement between Atlas Flexibles
15 GmbH and Schur Flexibles Uni SAS was marked
16 Dees Exhibit 39 for identification, as of this
17 date.)

18 MR. ROSENBAUM: We're up to 40, I think,
19 yes?

20 THE COURT REPORTER: This is 40, yes.

21 (Agreement for financial support between
22 Atlas Flexibles GmbH and Schur Flexibles Uni
23 SAS was marked Dees Exhibit 40 for
24 identification, as of this date.)

25 A. Are they different?

1 obligation for the principal amount of funds.

2 And identifies dates and tranches.

3 You see that?

4 A. I see that.

5 Q. Okay.

6 Did you approve, in your capacity as an
7 advisory board member of Schur, the transaction
8 reflected in this document?

9 A. I don't recall.

10 Q. Were you aware of the transaction
11 reflected in this document in your capacity as an
12 advisory board member at Schur?

13 A. I don't recall.

14 Q. Do you have any knowledge regarding the
15 circumstances about which this document was created?

16 A. I do not.

17 Q. Did you ever have a conversation with
18 Michael Fischkin when you were affiliated with
19 Schur?

20 A. I did not.

21 Q. So you don't believe you ever spoke to
22 Mr. Fischkin.

23 A. I do not believe I ever directly spoke to
24 Mr. Fischkin.

25 Q. Did you ever communicate to Mr. Fischkin

1 that if you pay someone, slip someone some money,
2 they'll do what you want them to do?

3 A. I did not.

4 Q. You've seen an instant message to that
5 effect, by Mr. Fischkin, correct?

6 A. I have.

7 MR. LEON: Object to form.

8 MR. ROSENBAUM: Let's mark.

9 (Series of text messages was marked Dees
10 Exhibit 41 for identification, as of this
11 date.)

12 Q. I'm showing you what's been marked as
13 Dees 41, and I'll point you to the English
14 translation that's certified. If you look on the
15 bottom right-hand corner, page 999756-00004.

16 Let me know when you're there.

17 A. I see it.

18 Q. Okay.

19 And just to orient you, you see, starting
20 towards the bottom, 12:04 p.m., from Conny Stohrer,
21 Can we somehow replace Marius with someone else,
22 question, question.

23 You see that?

24 A. I see that.

25 Q. Okay. If you look two down, Mr. Fischkin

1 writes back, I don't think so. Horst will never do
2 that. Marius is a genuine auditor.

3 You see that?

4 A. I see that.

5 Q. And Ms. Stohrer replies, But he's a pain
6 in the ass, exclamation.

7 You see that?

8 A. I see that.

9 Q. And Mr. Fischkin responds, Maybe we tell
10 Michael Dees to slip him some more money. He thinks
11 that always -- that is always possible.

12 You see that?

13 A. I see that.

14 Q. Did you ever intimate to Mr. Fischkin in
15 any way that slipping someone money, an auditor or
16 otherwise, can cause them to act the way that you
17 want?

18 A. I absolutely did not.

19 Q. So sitting here today, you have absolutely
20 no idea why Mr. Fischkin would associate you with
21 slipping Horst some more money? Do I have that
22 right?

23 A. You have that right.

24 Q. And you say under oath you've never even
25 spoken to Mr. Fischkin?

1 A. I would say under oath I've never spoken
2 to Mr. Fischkin.

3 Q. Yet you agree he mentions you by name as
4 the genesis of the idea to slip some more money to
5 PwC, correct?

6 A. I will agree with you that he has used my
7 name in this -- in this chat.

8 Q. And he goes on to say, he thinks that
9 always works or it's always possible, appears
10 referring to you, correct?

11 A. It appears he's referring to me in this
12 chat.

13 MR. ROSENBAUM: Nothing further.

14 EXAMINATION BY MR. LEON:

15 Q. Mr. Dees, it's been a long day. I just
16 want to clean up three subjects. Shouldn't take
17 more than five minutes, if you'll just indulge me.

18 First, you were asked questions about your
19 role as a director of Atlas Flexibles Coöperatief.
20 Do you recall that?

21 A. Yes, I do.

22 Q. Just so the record is clear, are you still
23 a director of that entity today, to your knowledge?

24 A. Yes, I am. And I made a mistake earlier.

25 Q. Second subject, you were asked a series of

1 R&D was capitalized?

2 A. I don't recall if I was aware of R&D being
3 capitalized.

4 Q. You were not aware of whether cylinder
5 engravings were capitalized?

6 A. Cylinder engravings, I don't know if those
7 were an expense or a purchase of an asset.

8 Q. That's not my question. Were cylinder
9 engravings capitalized at Schur?

10 A. Based upon reading what you presented to
11 me today, it must have been.

12 Q. And you were presented with that
13 information as an advisory board member at Schur,
14 correct?

15 A. I don't recall if I was.

16 Q. Well, the document was produced by
17 Lindsay Goldberg, so it's somehow miraculously got
18 to Lindsay Goldberg's files presumably through you.
19 Fair?

20 A. Which one are you referring to?

21 Q. Dees 19. You can pull it up. But there's
22 a -- there's a host of them, so we can go back
23 through them.

24 A. What page?

25 Q. 2069.

285

1 You there?

2 A. Yup.

3 Q. Okay. So this document says, under
4 asterisk 3, Cash-based EBITDA group EBITDA means
5 reported EBITDA minus IFRS 16.

6 Do you know what "IFRS 16" is?

7 A. I don't.

8 Q. It then says, IT.

9 Do you know what "IT" is?

10 A. It usually means information technology.

11 Q. So you knew that cash-based EBITDA on this
12 document meant that for reported and adjusted
13 EBITDA, IT was being capitalized, correct?

14 A. That's what this document said.

15 Q. And you -- it then says, R&D.

16 What's "R&D"?

17 A. Usually means research and development.

18 Q. So from this document, if you received it,
19 you would have known that R&D was being capitalized,
20 correct?

21 A. If I received it and if I reviewed it.

22 Q. Yes?

23 A. If I received it and if I reviewed this
24 footnote, I would have known that.

25 Q. And then it says, Cylinder engravings.

1 Those were also being capitalized per this
2 document, correct?

3 A. Per this document, they -- per this
4 document they are.

5 Q. Let's go to -- oh. Let's go to the first
6 page of that document, in case it wasn't already
7 clear. Dees 19 is an email to you from
8 Mr. Schernthaner, correct?

9 A. This is 19, Dees 19?

10 Q. Yes.

11 A. Yes.

12 Q. So you received it, right?

13 A. I received it.

14 Q. Let's go to Dees 32. We just reviewed
15 this. Page 47273. This page identifies
16 expenditures that Schur was budgeting for
17 capitalization?

18 A. That's what this document shows.

19 Q. And that includes descriptions on a site
20 basis and then also it includes footprint, cylinder
21 and engraving, IT, R&D, and other, correct?

22 A. That's what the page includes.

23 Q. So if you received that document, then you
24 had knowledge of expenses at Schur that were being
25 capitalized, correct?

1 A. If I received this document, that means
2 it's -- it doesn't mean I have knowledge. It would
3 have been in this document.

4 Q. And going back to the first page, you
5 don't know if you received this document, but
6 you're -- but the people who work for you did,
7 correct?

8 A. One person who worked for me did.

9 Q. Let's go to 10, and then we can move --

10 A. Going to when? 10?

11 Q. To Dees 10. Take a look at pages 145 to
12 149.

13 (Witness reviewing document.)

14 Q. This document identifies on a site basis
15 and on a project-by-project basis investment
16 projects that for the year 2017 Schur intended to
17 capitalize, correct?

18 A. That's what it appears to show.

19 Q. And therefore it shows expenses to be
20 capitalized in that year based on the budget,
21 correct?

22 A. Yes.

23 MR. ROSENBAUM: I have nothing further.

24 MR. LEON: Give us five minutes.

25 THE VIDEOGRAPHER: The time now is

277

295

A C K N O W L E D G E M E N T

I, MICHAEL DEES, hereby certify, I have read
the transcript of my testimony taken under oath in
my deposition of December 19, 2024; that the
transcript is a true, complete and correct record
of what was asked, answered and said during this
deposition, and that the answers on the record as
given by me are true and correct.

MICHAEL DEES

Subscribed and sworn to
before me on this ____ day
of _____, 2024

NOTARY PUBLIC

C E R T I F I C A T E

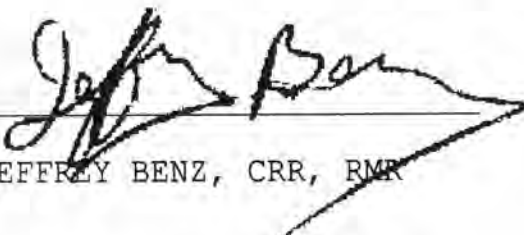
STATE OF NEW YORK)
COUNTY OF NEW YORK) Ss.:

I JEFFREY BENZ, a Certified Realtime Reporter, Registered Merit Reporter and Notary Public within and for the State of New York, do hereby certify:

That the witness whose examination is hereinbefore set forth was duly sworn by me and that this transcript of such examination is a true record of the testimony given by such witness.

I further certify that I am not related to any of the parties to this action by blood or marriage and that I am in no way interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my hand this 19th of December, 2024.


JEFFREY BENZ, CRR, RMR